

## ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Legislative Counsel  
7D43

EXTENSION

6121

NO.

DATE

24 April 1974

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S  
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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Attached for your signature is a reply to Chairman Moorhead on several bills which amend the Freedom of Information Act, sponsored by Reps. Koch and Abzug, to require that individuals be apprised of records concerning them that are maintained by Government agencies. The impact on our information is readily apparent. Protection of classification under Executive Order, provided by the bills, is not adequate. We recommend an amendment to exempt information protected by statute as well as Executive Order--in our case intelligence sources and methods. (Coordinated with OGC and the directorates.)

OMB needs our report as soon as possible in order to clear it by noon Monday, 29 April, and prepare Executive Branch testimony on the bills scheduled for 30 April.

George L. Cary  
Legislative Counsel

Honorable William S. Moorhead, Chairman  
Foreign Operations and Government Information Subcommittee  
Committee on Government Operations  
House of Representatives  
Washington, D. C. 20515

Dear Mr. Chairman:

This is in reply to your letter dated April 11, 1974, requesting a statement for the record on H. R. 12206, "To amend title 5, United States Code, to provide that persons be apprised of records concerning them which are maintained by Government agencies," and on related bills H. R. 13303 and H. R. 13872. In making our comments, in the absence of any indications to the contrary, we presume that the rights under H. R. 12206 and the related bills inure to all persons regardless of U. S. citizenship or domicile.

H. R. 12206

Section 552a.(a)(1) would preclude an agency from providing any information about an individual to any other agency unless the individual concerned is notified. Section (a)(3) would require an agency to maintain a record of the names and addresses of all persons to whom such information was provided. Sections (a)(4) and (5) permit any person to inspect his own record; to have copies made thereof; and to supplement and correct the record. Under Section (a)(6), an agency must "remove erroneous information of any kind" and must notify all agencies to whom the information was disseminated.

Section 552a. (b)(1) exempts from the provisions of the proposed amendments records that are specifically required by Executive Order to be kept secret in the interest of the national defense and foreign policy. Section 552a. (c) requires the President to report annually to Congress the number of records which are exempted under Section (b)(1).

H. R. 13303

H. R. 13303 contains provisions similar to those in H. R. 12206.

H. R. 13872

H. R. 13872 contains basically similar procedures as H. R. 12206 and H. R. 13303. It also establishes a Federal Privacy Board to oversee the implementation of the new procedures to be established.

Section 552a.(d) of H. R. 13872 would exempt certain records from the requirements in subparagraphs (1), (4), and (7) of paragraph (b) of the bill. The exemption applies to records which under Executive Order are to be kept secret in the interest of national defense or foreign policy and disclosure of which would endanger military plans, reveal military weaponry, or "endanger the life of any person engaged in foreign intelligence gathering operations of the United States Government."

Comments

It is clear that H. R. 12206 and H. R. 13303, by providing an exemption to include information which under Executive Order is to be kept secret, intend to exclude all sensitive information. Upon careful analysis, however, this exemption does not appear to cover all Agency holdings which require protection.

Certain information on individuals of foreign intelligence interest would come under the protection of Executive Order 11652, "Classification and Declassification of National Security Information and Material." Certain data, though involving very important programs, is not provided adequate protection under the Executive Order. The Director of Central Intelligence protects Agency information under his broader statutory responsibility, section 102(d)(3) of the National Security Act of 1947, as amended, which makes him responsible for protecting intelligence sources and methods from unauthorized disclosure. It is this statutory responsibility, rather than Executive Order, upon which the Director's protection would rest. If this statutory protection is not recognized it would be impossible under the provisions of the

bills to continue programs which are vital to the Agency's mission and upon which many customers depend.

Since we consider the exemptions in H. R. 12206 and H. R. 13303 inadequate to protect all Agency holdings, we would request amending exemption (b)(1) in both bills as follows (added language underlined): Beginning page 3, line 18, of H. R. 12206 and page 3, line 17 of H. R. 13303

"(b) This section shall not apply to records that are -

(1) specifically protected by or pursuant to statute or required by Executive Order to be kept secret in the interest of the national defense and foreign policy; or ..."

H. R. 13872 presents a much more serious problem. Under H. R. 13872, intelligence is excluded from certain requirements of the bill, but only if disclosure would endanger the life of anyone engaged in intelligence collection. Under this definition, any lesser measure of reprisal, whether incarceration or banishment, would require an agency to meet the requirements in the bill. Clearly, practically all Agency holdings, including classified information, would be affected. If H. R. 13872 is given favorable consideration, we request that the exemption in the bill be reworded to read as stated in H. R. 12206 and H. R. 13303 with the added amended language as above requested.

There are other factors which preclude full access by an individual to records concerning him maintained by an agency. Medical records often must be withheld from an individual. This is recognized by the medical profession and is a policy followed by this Agency. For example, if examination by our physicians reveals a serious medical condition, the individual is advised to consult his own doctor. The medical information is then furnished the individual's physician upon request and with the individual's approval. In this regard, we

concur in the comments of HEW as to the need to withhold medical information.

If the records of this Agency are recognizably exempt from the provisions of H. R. 12206 and the related bills, it would serve no purpose to report annually to the Congress the number of records exempted during the previous year since this would involve practically all of our holdings. We would urge therefore that the Committee include legislative history to make it clear that those agencies whose holdings are in very large measure exempt from the provisions of the bills need not meet this reporting requirement.

The Office of Management and Budget advises there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. E. Colby  
Director

☐ UNCLASSIFIED☐ INTERNAL  
USE ONLY☐ CONFIDENTIAL☐ SECRET

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DRAFT:PLC:cg (23 Apr 74)

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H. R. 12206

Section 552a, (a)(1) would preclude an agency from providing any information <sup>about</sup> ~~concerning~~ <sup>concerned</sup> an individual to any other agency unless the individual is notified. Section (a)(3) would require an agency to maintain a record of the names and addresses of all persons to whom such information was provided. Sections (a)(4) and (5) permit any person to inspect his own record; to have copies made thereof; and to supplement and correct the record. Under Section (a)(6), an agency must "remove erroneous information of any kind" and must notify all agencies to whom

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Section 552 a. (b)(1) exempts from the provisions of the proposed amendments records that are specifically required by Executive Order to be kept secret in the interest of the national defense and foreign policy. Section 552a. (c) requires the President to report annually to Congress the number of records which are exempted under Section (b)(1).

H. R. 13303

*H.R. 13303 contains provisions similar to those in H.R. 12206.*  
The above comments on H. R. 12206 apply equally to H. R. 13303.

H. R. 13872

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H. R. 13872 ~~establishes~~ basically similar procedures as H. R. 12206 and H. R. 13303. It *also* ~~additionally~~ establishes a Federal Privacy Board to oversee the implementation of the new procedures to be established.

Section 552a. (d) of H. R. 13872 would exempt certain records from the requirements in subparagraphs (1), (4), and (7) of paragraph (b) of the bill. The exemption applies to records which under Executive Order are to be kept secret in the interest of national defense or foreign policy and disclosure of which would endanger military plans, reveal military weaponry, or "endanger the life of any person engaged in foreign intelligence gathering operations of the United States Government."



Comments

It is clear that H. R. 12206 and H. R. 13303, by providing an exemption to include information which under Executive Order is to be kept secret, intend to exclude all sensitive information. Upon careful analysis, however, this exemption does not appear to cover all Agency holdings which require protection.

*Certain* ~~Record~~ information on individuals of foreign intelligence interest *would come under the* ~~if drawn from clandestine and covert sources warrants protection under~~ Executive Order 11652, "Classification and Declassification of National Security Information and Material," and would be exempt under the provisions of H. R. 12206 and H. R. 13303. *Certain data,* ~~In many instances, however,~~ *though involving very important programs* ~~data is drawn from overt sources, including openly available publications,~~ *is not provided adequate protection under* ~~and does not come under the protection of~~ the Executive Order. ~~Though~~ *such information is unclassified, the fact of a U. S. intelligence interest in* ~~the subject person is sensitive. The Director of Central Intelligence does~~ *his broader statutory responsibility,* ~~protect such information under section 102(d)(1) of the National Security~~ Act of 1947, as amended, which makes him responsible for protecting intelligence sources and methods from unauthorized disclosure. It is this statutory responsibility, rather than Executive Order, upon which the Director's *protection* ~~authority~~ would rest. If this protection is lost, it would ~~not be possible~~ *under* the provisions of the bills to continue certain programs which are vital to the Agency's mission and upon which many customers depend.

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"(1) specifically protected by statute or required by Executive Order to be kept secret in the interest of the national defense and foreign policy; or ... "

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There are factors ~~other than security~~ <sup>which</sup> that would preclude full access by an individual to records concerning him maintained by

an agency. Medical records often must be withheld from an individual, ~~if knowledge of their content is considered harmful~~. This is recognized by the medical profession and is a policy followed by the Agency. <sup>For example,</sup> If examination by our physicians reveals a serious medical condition, the individual is advised to consult his own doctor. The medical information is then furnished the <sup>individual's</sup> ~~employee's~~ physician upon request, <sup>and with the individual's approval.</sup> In this regard, we concur in the comments of HEW as to the need to withhold ~~such~~ <sup>medical</sup> information.

If the holdings of this Agency are recognizably exempt from the provisions of H. R. 12206 and the related bills, it would serve no purpose to report annually to the Congress the number of records exempted during the previous year. <sup>Don't</sup> ~~It would be a tremendous administrative burden.~~ We would urge that the Committee include legislative history to make it clear that those agencies whose holdings are in very large measure exempt <sup>from the provisions of the bills</sup> need not meet this reporting requirement.

The Office of Management and Budget advises there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. E. Colby  
Director